

Rough Transcript

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6	CHEFS DIET ACQUISITION CORP.,
7	d/b/a CHEFS DIET,
8	Plaintiff, CASE NO. 14-CV-8467(JMF)
9	v.
10	LEAN CHEFS, LLC, NICHOLAS ZAZZA and ARTHUR GUNNING,
11	Defendants.
12	-----X
13	* C O N F I D E N T I A L *
14	* A T T O R N E Y S' E Y E S O N L Y *
15	DEPOSITION OF ARTHUR V. GUNNING
16	New York, New York
17	Wednesday, January 7, 2015
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5	January 7, 2015
6	11:00 a.m.
7	
8	CONFIDENTIAL/ATTORNEYS' EYES ONLY
9	deposition of ARTHUR V. GUNNING, held at
10	the offices of Pryor Cashman, Seven Times
11	Square, New York, New York, pursuant to
12	Notice, before Annette Arlequin, a
13	Certified Court Reporter, a Registered
14	Professional Reporter, a Certified LiveNote
15	Reporter, a Certified Realtime Reporter,
16	and a Notary Public of the State of New
17	York.
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5	PRYOR CASHMAN LLP
6	Attorneys for Plaintiff
7	7 Times Square
8	New York, New York 10036
9	BY: JAMES S. O'BRIEN, JR., ESQ.
10	ANDREW M. GOLDSMITH, ESQ.
11	
12	MEREDITH & KEYHANI PLLC
13	Attorneys for Defendants'
14	330 Madison Avenue - 6th Floor
15	New York, New York 10017
16	BY: DARIUS KEYHANI, ESQ.
17	FRANCES H. STEPHENSON, ESQ.
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<p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED by</p> <p>3 and between the attorneys for the</p> <p>4 respective parties herein, that filing and</p> <p>5 sealing be and the same are hereby waived;</p> <p>6 IT IS FURTHER STIPULATED AND AGREED</p> <p>7 that all objections, except as to the form</p> <p>8 of the question, shall be reserved to the</p> <p>9 time of the trial;</p> <p>10 IT IS FURTHER STIPULATED AND AGREED</p> <p>11 that the within deposition may be sworn to</p> <p>12 and signed before any officer authorized to</p> <p>13 administer an oath, with the same force and</p> <p>14 effect as if signed and sworn to before the</p> <p>15 Court.</p> <p>16</p> <p>17 - 000 -</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 A R T H U R G U N N I N G, called as a</p> <p>3 witness, having been duly sworn by a</p> <p>4 Notary Public, was examined and testified</p> <p>5 as follows:</p> <p>6 * * *</p> <p>7 EXAMINATION BY</p> <p>8 MR. O'BRIEN:</p> <p>9 Q. Good morning, Mr. Gunning. My name</p> <p>10 is James O'Brien. I represent Chefs Diet 11:10AM</p> <p>11 Acquisition Corp.</p> <p>12 If I refer to that entity as CDAC,</p> <p>13 will we be able to keep that straight?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I'm going to be asking you a 11:11AM</p> <p>16 series of questions. My questions are not</p> <p>17 supposed to be trick questions or difficult. If</p> <p>18 I ask you a question that you don't understand,</p> <p>19 just let me know and I'll work with you to get a</p> <p>20 question out that you can understand, okay? 11:11AM</p> <p>21 A. Yes.</p> <p>22 Q. The court reporter takes down what</p> <p>23 you say, so just give me an audible answer. A</p> <p>24 shrug or a nod of the head, she can't take that</p> <p>25 down, all right? 11:11AM</p>
Page 8	Page 9
<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 A. Of course.</p> <p>3 Q. If you need to take a break, let me</p> <p>4 know. We'll accommodate you.</p> <p>5 Your attorney is here to help you. 11:11AM</p> <p>6 Feel free to consult with him, but I would ask</p> <p>7 you to wait until you've already given your</p> <p>8 answer. Don't consult with him during the</p> <p>9 pendency of a question because it then suggests,</p> <p>10 you know, that he's suggesting answers and we 11:11AM</p> <p>11 don't want to have that, okay?</p> <p>12 A. Understood.</p> <p>13 Q. Okay. All right. So let's start</p> <p>14 with some background information.</p> <p>15 Did you attend college, sir? 11:12AM</p> <p>16 A. No, I didn't.</p> <p>17 Q. Did you graduate from high school?</p> <p>18 A. Yes, I did.</p> <p>19 Q. Can you give me a brief recitation of</p> <p>20 your employment history? 11:12AM</p> <p>21 A. Yes. Employment history, when I was</p> <p>22 in high school, my mother owned a restaurant.</p> <p>23 The restaurant was failing so I made a decision</p> <p>24 to work with her and help her build her business</p> <p>25 rather than go to college, which the business 11:12AM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 winded up being successful and she sold it, and</p> <p>3 she wounded up doing well with it, thank God.</p> <p>4 Thereafter I built routes. Winded up</p> <p>5 building routes from scratch to million dollar 11:13AM</p> <p>6 businesses.</p> <p>7 A&F Candy Distributors is one of</p> <p>8 them.</p> <p>9 Had a Reisman pretzel route, a whole</p> <p>10 line of pretzels. Built those from zero to 400 11:13AM</p> <p>11 accounts. Did that in a relatively short period</p> <p>12 of time.</p> <p>13 Mystic Spring Water and Juice, I</p> <p>14 launched that in New York. I was the largest</p> <p>15 distributor in Brooklyn. That was very 11:13AM</p> <p>16 successful.</p> <p>17 Went to Wall Street, became a large</p> <p>18 broker on Wall Street. Did that for about I</p> <p>19 guess three, four years.</p> <p>20 Opened up -- was a partner with Zone 11:13AM</p> <p>21 Gourmet Diet Delivery. Built that from zero to</p> <p>22 a \$30 million company.</p> <p>23 Built Zone Chefs, which became Chefs</p> <p>24 Diet. Built that from scratch, zero</p> <p>25 advertising, up to a 40 to \$50 million company. 11:13AM</p>

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1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *	1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *
2 And now Lean Chefs.	2 Rock Securities?
3 Q. Thank you.	3 A. Right after I got licensed, I went to
4 When you said that you were on Wall	4 a company called Toluca Pacific.
5 Street, when did you start working on Wall 11:14AM	5 Q. When was that? 11:15AM
6 Street?	6 A. That was a year after.
7 A. Twenty-eight years old. About	7 Q. '95?
8 twenty-one years ago.	8 A. Yeah. I was at Toluca for about
9 Q. So is that about '94?	9 three years.
10 A. Yeah. '93, '94, um-hmm. 11:14AM	10 Q. Till about '98? 11:15AM
11 Q. And when you started on Wall Street,	11 A. '97, '98, yeah.
12 what were you doing?	12 Q. Okay. Where did you go after that?
13 A. I was a cold caller for about a year	13 A. After that there was a company by the
14 just learning the business. I really didn't do	14 name of -- that was the last brokerage firm that
15 much solicitation, just started learning the 11:14AM	15 I was actually a financial consultant in. At 11:16AM
16 business. Passed my Series 7 test and a 63, and	16 that point I started looking into diet delivery.
17 then became a financial consultant.	17 I found a company that was doing it in Long
18 Q. Where were you working as a cold	18 Island, so I wound up leaving the industry a few
19 caller in '94?	19 years after that to really do full time diet
20 A. It was a company by the name of White 11:15AM	20 delivery. 11:16AM
21 Rock, White Rock Securities. Matter of fact,	21 Q. Can you give me any approximate date
22 that's where I met the owner of Chefs Diet,	22 when you left the industry?
23 Kevin Glodek. He was also working within the	23 You've told me that you left Toluca
24 same office.	24 Pacific around '97?
25 Q. When did you stop working for White 11:15AM	25 A. Yeah, Toluca Pacific was about '97. 11:16AM
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1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *	1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *
2 Let's see, 17 years. It was probably 2000,	2 Q. And Zone Gourmet was in Long Island?
3 maybe 2000 or -- '97 to 2000. '97, '99, right	3 A. Yes, it was. And I was doing the
4 around there. I'm not really sure. I don't	4 sales and marketing for that company. I was in
5 want to give you the wrong answer, but '97, '99 11:16AM	5 charge of all the sales and marketing. 11:17AM
6 I was out of the industry.	6 Q. So you started there about '99?
7 Q. And in or about 1999, you say that	7 A. Roughly, yes.
8 you found a diet delivery company?	8 Q. For how long were you with Zone
9 A. There was a gentleman making the	9 Gourmet?
10 meals in Long Island, 20 clients, very small. I 11:17AM	10 A. Zone Gourmet, probably about five 11:18AM
11 became one of his clients and I loved the	11 years I would think.
12 concept. I lost weight. I felt great.	12 Q. Till about 2004?
13 I called him and I said, "Do you know	13 A. 2004, 2005, 6, 7, 8, 9. Couldn't
14 what you have here?"	14 have been more than 2002, 2003 because I waited
15 And he said, "Well, if I get to 100 11:17AM	15 two years to open up. After I left them, two 11:18AM
16 clients, I'll be happiest guy in the world."	16 years later we opened up Zone Chefs and Zone
17 And I said, "I'll get you thousands	17 Chefs I built that in probably about four years,
18 of clients. I said I believe in this. We're	18 four or five years and that was up until about
19 helping people."	19 2009.
20 So I got involved with it and we 11:17AM	20 Q. How did you come to learn of Zone 11:19AM
21 winded up going up to 3,000 clients with my	21 Gourmet?
22 efforts.	22 A. I had a personal trainer that I was
23 Q. Was the name of that company Zone	23 working out with and like anything else, if
24 Gourmet?	24 you're working out and you're not eating
25 A. That was. 11:17AM	25 correctly, you're not going to get the results. 11:19AM

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1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *	1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *
2 name."	2 MR. KEYHANI: Objection to form.
3 Most of the partners weren't	3 You can answer the question.
4 hands-on. Nick and I put a lot of hours in, a	4 A. No. We just let them build the
5 lot of work. The first year I worked 365 days	5 website. That's what Mr. Zazza does. He's very
6 straight, never took a day off. Some days were	6 talented. He's great with technology. I'm
7 20-hour days. Always there. That's pretty much	7 great with marketing and advertising. That's
8 what we do; we work hard and we build, you know?	8 why we have a great relationship.
9 And I guess the other partners it was	9 Q. Well, when he -- he built the new
10 a lot easier for them to want to change the	10 website for Chefs Diet, correct?
11 name. You know, for us we were attached to the	11 A. Yes.
12 name. It's our brand, we built it.	12 Q. And did he choose the color scheme to
13 Q. When the name changed to Chefs Diet,	13 be employed on that website?
14 was there a new logo created?	14 A. Once again, it might have been
15 A. With Chefs Diet? Yes.	15 discussed with everyone. We had different
16 Q. And who created that logo?	16 colors. We had zone -- we had orange for one
17 A. Nick Zazza.	17 company. We had, you know, Zone Diet at Home
18 Q. Were you involved in that at all?	18 was orange. We had different colors.
19 A. The name.	19 Q. But for Chefs Diet, do you recall
20 Q. Well, the logo. Were you involved	20 discussions in which you were deciding what
21 with the creation of that?	21 color to use for the website?
22 A. Everyone gave their feedback. We had	22 A. I don't recall.
23 partners so we always discussed everything.	23 Q. You said you had different companies.
24 Q. And similarly, did you discuss the	24 What different companies did you
25 look and feel of the website?	25 have?
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1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *	1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *
2 A. Different companies as far as	2 Q. Now you say these are divisions.
3 different divisions?	3 Are they actual entities I mean like
4 Q. I'm just saying --	4 an LLC or a corporation? Do you know?
5 A. We had different divisions within	5 A. I'm not sure.
6 Zone Chefs.	6 MR. KEYHANI: Objection to the extent
7 Zone Chefs had a kosher division	7 it calls for a legal conclusion.
8 which made kosher meals.	8 A. I'm not sure exactly. I don't want
9 Zone Chefs had a vegetarian program,	9 to give you a wrong answer on that so...
10 which I formed a relationship with Zen Palate	10 Q. When you say "the national program,"
11 and they were making our vegetarian meals.	11 what is that or what was that under Chefs Diet?
12 Q. How about Chefs Diet?	12 A. Well, let's go back to Zone Chefs.
13 A. Those relationships carried over.	13 Zone Chefs I came up with an idea that if I
14 Q. Once the name changed from Zone Chefs	14 could find a company that could make the meals
15 to Chefs Diet, were there divisions, as you say,	15 for us, package the meals and ship them across
16 in Chefs Diet?	16 the whole country, I thought it would be a great
17 A. Yes. Same relationships just carried	17 idea.
18 over and they changed the name.	18 I found that place in Iowa. Set up a
19 So if it was Zone Chef Kosher, then	19 meeting, went out there, formed a wonderful
20 it was Chefs Diet Kosher. And the vegetarian	20 relationship with them and we winded up doing
21 was the same way and the kids program I designed	21 national meals; making the meals and delivering
22 was also the same way. The national program	22 them across the whole country with a process
23 became I guess, I believe it's Chefs Diet	23 called Modified Atmosphere Packaging, and we
24 Nation. I'm not -- I don't -- national. I'm	24 built that up pretty strong.
25 not sure what their name is.	25 Q. Is that dry ice?

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1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *	1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *
2 A. It was used with dry ice, right, and	2 A. That would be our -- some of the
3 it was modified atmospheric where they take out	3 partners. I guess it was probably Alex.
4 the oxygen and they put nitrogen within the	4 I found the company. I went out
5 package to give it a longer shelf life. 11:48AM	5 there, I formed the relationship and then I let 11:49AM
6 Q. And it's frozen food.	6 them do all the paperwork and everything else.
7 A. No, fresh food.	7 Q. My question really was who were the
8 Q. Packed in dry ice.	8 parties to that -- there was a written contract,
9 A. Well, to keep it nice and cold you	9 right?
10 put the ice packs within the bag, but the 11:48AM	10 A. Yes. 11:49AM
11 product itself was lettuce that would last 21	11 Q. Okay. And who were the parties to
12 days because the nitrogen was in there, so it	12 that contract?
13 just extended the shelf life.	13 You had Pure Foods on one side and
14 Q. Okay.	14 then what was the entity or entities on the
15 A. But fresh food, not frozen. 11:48AM	15 other side? 11:49AM
16 Q. And that would be mailed across the	16 A. Same partners, but now with the
17 country?	17 national, Mr. Zazza was also involved.
18 A. Across the country.	18 Q. And I don't mean to ask you a legal
19 Q. On a weekly basis?	19 question, but if you can remember, was the
20 A. Weekly. 11:48AM	20 contract between Pure Foods and these 11:49AM
21 Q. What is the name of the outfit in	21 individuals or was the contract between Pure
22 Iowa?	22 Foods and a company?
23 A. It was Pure Foods was the company.	23 MR. KEYHANI: I'm going to object to
24 Q. And who entered into the agreement	24 the extent it calls for a legal conclusion.
25 with Pure Foods? 11:49AM	25 But you can answer the question. 11:49AM
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1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *	1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *
2 A. I'm not sure.	2 A. I would say yes.
3 Q. Okay.	3 Q. So Zone Diet at Home was able to make
4 A. I don't want to give you a wrong	4 payments.
5 answer.	5 A. Yes. 11:51AM
6 Q. Okay. Was the the national program,	6 Q. Did Zone Diet at Home have a bank
7 did it have a name?	7 account?
8 A. Yes. It was Zone Diet at Home.	8 A. I would say yes.
9 And going to the color schemes that	9 Q. Did Zone Diet at Home have a
10 you mentioned before, that site was orange. 11:50AM	10 president or CEO? 11:51AM
11 That was a totally different color so we just --	11 A. I'm not sure if we ever named
12 we changed up the colors based on I believe that	12 anybody as CEO for that company, but I'm sure --
13 the kosher was blue, so there was no real set	13 possibly. I'm not sure. I don't want to give
14 color for anything. It was just a different	14 you the wrong answer.
15 look and feel. 11:50AM	15 Q. Is it your understanding that Chefs 11:51AM
16 Q. And Zone Diet at Home, was that a	16 Diet owned Zone Diet at Home?
17 corporation or an LLC, do you know?	17 A. Chefs Diet -- no, different partners.
18 MR. KEYHANI: Objection to the extent	18 There were different partners with that.
19 it calls for a legal conclusion.	19 Mr. Zazza wasn't a partner with Chefs
20 You can answer the question. 11:50AM	20 Diet, but Mr. Zazza was a partner with Zone Diet 11:51AM
21 A. I'm not sure. I don't want to -- I'm	21 at Home, so no, it was just a different company.
22 not sure. I'm sure it was a corporation, but	22 Q. So we've got Chefs Diet and Zone Diet
23 I'm not sure if it was an LLC. I'm not sure.	23 at Home.
24 Q. Did Zone Diet at Home have a	24 A. Um-hmm.
25 checkbook? 11:50AM	25 Q. What was the name of the kosher 11:52AM

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1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *	1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *
2 company?	2 sites to see which ones are available. Then
3 A. Zone Chefs Kosher and I think it	3 we'd look up and see which ones are already
4 became Chefs Diet Kosher.	4 taken, already corporations. So we always have
5 Q. And who were the owners of the Chefs 11:52AM	5 a huge list and then we just eliminate based on, 11:54AM
6 Diet Kosher?	6 you know, just a process that we go through to
7 A. The same owners that were with Zone	7 come up with any name.
8 Chefs or Chefs Diet, the same owners.	8 Q. Can you recall any of the other names
9 Q. Were there any other companies?	9 that you were contemplating when you chose Chefs
10 A. No, not that I can recall. 11:52AM	10 Diet? 11:54AM
11 Q. After the change to Chefs Diet, did	11 A. It was probably hundreds of them. I
12 Zone Diet at Home change its name?	12 mean pretty much we just come up with a bunch of
13 A. Yes, I would believe they did.	13 names.
14 Q. And what was the new name?	14 At one point when I was -- the same
15 A. I don't recall. It could be Chefs 11:53AM	15 way with Zone Chefs. You know, I would come up 11:55AM
16 Diet National. I'm not sure. I don't want to	16 with a bunch names and I guess a lot of them
17 give you the wrong name because I don't recall	17 back them were zone. That was a word we were
18 what the name is.	18 using was zone because it seemed like the whole
19 Q. When you made the change from Zone	19 industry was using that type of name, so with
20 Chefs to Chefs Diet, can you tell me how you 11:54AM	20 this I guess some of the names, most of the 11:55AM
21 came up with Chefs Diet?	21 names were, you know, a lot of them had the name
22 A. The name?	22 chefs involved. Chefs are very popular on TV, a
23 Q. Um-hmm.	23 lot of celebrity chefs, so chef seemed like it
24 A. We'd brainstorm. We'd come up with a	24 was a popular word to use for meals.
25 bunch of names. Then we'd go to the domain 11:54AM	25 Q. Are you familiar with an entity 11:55AM
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1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *	1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *
2 called Chefs Diet Delivery LLC?	2 the question to the extent it calls for a
3 A. No, no.	3 legal conclusion.
4 Q. Let me show you what we previously	4 But you can answer the question.
5 have marked as an exhibit. 11:56AM	5 BY MR. O'BRIEN: 11:58AM
6 MR. O'BRIEN: Off the record.	6 Q. Have you seen it before?
7 (Discussion off the record.)	7 A. Yeah. Probably a while, but I'm not
8 (Plaintiff's Exhibit 1, Second	8 sure if it's the exact thing that I had seen --
9 Amended and Restated Asset Purchase	9 Q. Okay.
10 Agreement, Bates stamped CDAC 639 through	10 A. -- but it could be, possibly. 11:58AM
11 685, marked for identification, as of this	11 Q. Okay. You do know that there was a
12 date.)	12 sale, right?
13 BY MR. O'BRIEN:	13 A. Yes.
14 Q. Mr. Gunning, I've placed before you	14 Q. Okay. And there was a sale
15 what we marked as Plaintiff's Exhibit 1 for 11:56AM	15 memorialized by some written agreement, right? 11:58AM
16 identification.	16 A. Correct.
17 Do you recognize this document?	17 Q. So in the first paragraph you see
18 MR. KEYHANI: Take some time to look	18 this is the paragraph where they say who the
19 at it.	19 parties to the contract are, and they mention
20 (Document review.) 11:57AM	20 Chefs Diet Acquisition Corp. 11:58AM
21 A. Okay.	21 That's the CDAC that I mentioned,
22 Q. Do you recognize that?	22 right?
23 A. Yes. This is when we sold the	23 A. Yes.
24 company. This was I guess --	24 Q. And then it says on the one side, and
25 MR. KEYHANI: I'm going to object to 11:57AM	25 on the other side we have Chefs Diet Delivery 11:58AM

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1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *	1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *
2 that company still exist?	2 Zone Chefs to create the marketing.
3 A. I don't know. Once again, that's	3 MR. KEYHANI: Objection to form.
4 their business.	4 What are you talking about, Chefs
5 Q. Did Chefs Diet have a program in 12:08PM	5 Diet or -- 12:09PM
6 place to develop new customers?	6 MR. O'BRIEN: Zone Chefs. I'm sorry.
7 A. Did they have a program in place to	7 MR. KEYHANI: You were going back --
8 develop new customers after we sold it?	8 MR. O'BRIEN: Yeah.
9 Q. No, no. While you were -- well,	9 MR. KEYHANI: Go ahead.
10 strike that. 12:08PM	10 BY MR. O'BRIEN: 12:09PM
11 After the change in name from Zone	11 Q. I'm talking about while you were at
12 Chefs to Chefs Diet, you stayed -- you were	12 Zone Chefs.
13 still a partner?	13 A. Everything.
14 A. Correct.	14 Q. You sent out mailings?
15 Q. For Zone Chefs while you were there, 12:09PM	15 A. We sent out mailings. We did TV. We 12:09PM
16 I understand that you had that big pop at the	16 did radio. We did blogs. We did billboards,
17 beginning because of the article.	17 gorilla marketing, taking the sales crew and
18 After that time, did you have a	18 going out and handing out pamphlets on the
19 marketing program of any kind?	19 street; going to events; going to Fortunoff's
20 A. Yes. I created the marketing. 12:09PM	20 and doing cooking shows; editorials. Unlimited 12:10PM
21 Q. You created the marketing.	21 to what we did. I'm always finding new sources
22 A. Yes.	22 of trying to bring in, you know, new clients.
23 Q. That's your thing.	23 Q. Referring now to the mailing, that's
24 A. Yes, that's my forte.	24 one element of your marketing efforts, right?
25 Q. Tell me some of the things you did at 12:09PM	25 A. A small piece. 12:10PM
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1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *	1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *
2 Q. Mailings.	2 the transcript of this deposition until
3 A. A small piece of it, right.	3 we've had a chance to review it and
4 Q. And how do you get names of people to	4 designate certain areas.
5 mail fliers to? 12:10PM	5 MR. GOLDSTMITH: I think that's part 12:11PM
6 A. From different companies, but I found	6 of the protective order, yes.
7 one company that I'm still using to this day	7 MR. KEYHANI: Is that part of the
8 that really provides, you know, the right type	8 protective order?
9 of demographic.	9 MR. GOLDSTMITH: I'm pretty sure it
10 Q. What company is that? 12:10PM	10 is. 12:11PM
11 A. Is this confidential where the other	11 MR. KEYHANI: Well, just in case,
12 company won't get this name? Because this is	12 because it's not in front of me, I want to
13 part of my --	13 make sure that this deposition is
14 MR. KEYHANI: We're going to	14 designated as highly confidential,
15 designate the entire deposition 12:11PM	15 attorneys' eyes only, and then we will 12:11PM
16 confidential and then we'll in 30 days	16 review it and then indicate specifically
17 clarify that.	17 what parts we want designated as highly
18 THE WITNESS: Because I don't want to	18 confidential.
19 give them my marketing strategies of	19 MR. O'BRIEN: That's fine.
20 course. 12:11PM	20 MR. KEYHANI: Go ahead. 12:11PM
21 MR. KEYHANI: Are you okay with that?	21 A. **Epsilon is the name of the company.
22 MR. O'BRIEN: I'm not going to give	22 Q. Okay. And where is Epsilon located?
23 anyone your marketing strategies.	23 A. I'm not sure. I'm not sure, but
24 MR. KEYHANI: No, no, but	24 Epsilon, you can look them up on line. They're
25 disclosing -- you're not going to disclose 12:11PM	25 one of the biggest data companies out there. 12:11PM

Rough Transcript

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<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 I've been using them forever.</p> <p>3 Q. They're one of the biggest data</p> <p>4 companies out there.</p> <p>5 A. For what we do. 12:12PM</p> <p>6 Q. Okay. So their name is not a secret,</p> <p>7 right?</p> <p>8 A. No, no.</p> <p>9 Q. And how do you purchase names from</p> <p>10 them? 12:12PM</p> <p>11 A. I go by a certain demographic. What</p> <p>12 I look for is a certain income; people who are</p> <p>13 interested in health products; have purchased</p> <p>14 any type of health product in the past; certain</p> <p>15 age. You know, our demographic. 12:12PM</p> <p>16 And they would let me know how many</p> <p>17 names they have within a geographic area that</p> <p>18 fit pretty much the demographic that I'm looking</p> <p>19 for. They would let me know how many names and</p> <p>20 we would purchase. 12:12PM</p> <p>21 We purchased millions and millions of</p> <p>22 names with the last company and to date right</p> <p>23 now we've purchased hundreds of thousands of</p> <p>24 names. That's what we do. We collect data.</p> <p>25 Q. So with Zone Chefs you purchased 12:12PM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 millions and millions of names?</p> <p>3 A. We did. We used to mail 400,000 a</p> <p>4 month. A small percentage of that will become</p> <p>5 clients of course. 12:13PM</p> <p>6 Q. When you -- any idea where Epsilon</p> <p>7 gets these names from?</p> <p>8 A. I have no idea, but it's --</p> <p>9 Q. Really? I mean --</p> <p>10 A. I don't know how they do their 12:13PM</p> <p>11 business, but I know they -- it's a data</p> <p>12 company.</p> <p>13 Q. Right.</p> <p>14 A. Like any data company. I don't know</p> <p>15 how they get their names, but I know that it 12:13PM</p> <p>16 definitely fits the demographic because when the</p> <p>17 clients do call up, they can afford the product.</p> <p>18 It's an expensive product. We want</p> <p>19 to make sure that we're not getting a lot of</p> <p>20 tire kickers wasting our salespeople's time, so 12:13PM</p> <p>21 as long as they're calling up and they can</p> <p>22 afford the product and they're interested, then</p> <p>23 they're giving us the right list.</p> <p>24 Q. Did you use Epsilon at Zone Chefs?</p> <p>25 A. I did. 12:13PM</p>
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<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 Q. So you've been using Epsilon for</p> <p>3 years.</p> <p>4 A. Forever. That's my company, yeah.</p> <p>5 Q. And how much does Epsilon charge you 12:13PM</p> <p>6 for names or how much did they charge you while</p> <p>7 you were at Zone Chefs?</p> <p>8 A. I don't know the numbers back then.</p> <p>9 Roughly, it's not really that expensive. Maybe</p> <p>10 for 25,000 names it could be anywhere from 12:14PM</p> <p>11 \$1,500 or something like that to \$2,000, and if</p> <p>12 we did more volume, we got lower breaks, lower</p> <p>13 pricing.</p> <p>14 Q. So there's an agreement in place</p> <p>15 whereby if you buy so many names, you pay so 12:14PM</p> <p>16 much money; is that right?</p> <p>17 A. Pretty much, yes.</p> <p>18 And then we would go to data shows.</p> <p>19 Data shows is also something that, you know, you</p> <p>20 find new connections. Data shows, people 12:14PM</p> <p>21 providing data for different industries.</p> <p>22 Q. Okay. Does Epsilon, again, while you</p> <p>23 were at Zone Chefs, did Epsilon send an invoice</p> <p>24 to you that you'd pay?</p> <p>25 A. Of course. They still do to this 12:14PM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 day. We still use Epsilon, they still send us</p> <p>3 invoices.</p> <p>4 Q. Do you have a written agreement?</p> <p>5 A. A written agreement that we purchase 12:15PM</p> <p>6 their data? I guess they would give us an</p> <p>7 invoice and we would pay that invoice.</p> <p>8 Q. I'm just curious if there's some, you</p> <p>9 know, some agreement that you have with them or</p> <p>10 it's just you order what you order and they send 12:15PM</p> <p>11 you an invoice.</p> <p>12 A. It's public information. You know,</p> <p>13 it's data. It's just names and phone numbers</p> <p>14 and addresses, and these are people that are the</p> <p>15 right people, you know, because we don't want to 12:15PM</p> <p>16 waste the mailer. Mailers are expensive, so the</p> <p>17 last thing you want to do is mail to the wrong</p> <p>18 demo, you're not going to get the clients. So</p> <p>19 they would provide the right list for us and</p> <p>20 that's always been one of my go-to if not the 12:15PM</p> <p>21 go-to company for me. They provide quality.</p> <p>22 Q. So when you buy these names, they're</p> <p>23 not customers yet, right?</p> <p>24 A. No, people.</p> <p>25 Q. So do you call them leads? 12:15PM</p>

Rough Transcript

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<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 A. Data. They're just data.</p> <p>3 Q. What are leads then?</p> <p>4 A. A lead I guess would be considered</p> <p>5 somebody who called us, somebody -- if they're 12:16PM</p> <p>6 not a client, to me a lead and data is all the</p> <p>7 same thing.</p> <p>8 Q. So if I were to say when you buy</p> <p>9 these names they're leads, that would be okay?</p> <p>10 A. I guess you can name it whatever you 12:16PM</p> <p>11 want to name it.</p> <p>12 Q. But you just said that they're the</p> <p>13 same to you and I'm just --</p> <p>14 A. We buy data from them.</p> <p>15 Q. Okay.</p> <p>16 A. We buy data. Some people do call it</p> <p>17 leads. You know, the shows that we go to</p> <p>18 Leadcom, it's data, you know? So people have</p> <p>19 different names for it.</p> <p>20 Q. Did Zone Chefs keep a database of its 12:16PM</p> <p>21 customers?</p> <p>22 A. I'm sure we did.</p> <p>23 Q. And in that database, would you have</p> <p>24 information about your customers such as what</p> <p>25 they like, what they don't like, things like 12:16PM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. Would it be fair to say that over</p> <p>5 time with a customer, you would develop a 12:17PM</p> <p>6 increasingly detailed profile of what they like</p> <p>7 and don't like?</p> <p>8 A. Over time, usually at the initial</p> <p>9 sale.</p> <p>10 Q. If I sign up for your product -- 12:17PM</p> <p>11 A. Yes.</p> <p>12 Q. -- and I order what I order --</p> <p>13 A. Right. You would tell us at that</p> <p>14 point what you like or --</p> <p>15 MR. KEYHANI: Objection to form. 12:17PM</p> <p>16 Are you talking about the current</p> <p>17 company or previous company or both</p> <p>18 companies? What time period?</p> <p>19 MR. O'BRIEN: Today.</p> <p>20 MR. KEYHANI: With Lean Chefs? 12:17PM</p> <p>21 MR. O'BRIEN: Yes.</p> <p>22 BY MR. O'BRIEN:</p> <p>23 Q. I call you up today, I'll tell you</p> <p>24 what I want to order.</p> <p>25 A. Yes. 12:17PM</p>
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<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 Q. I'll make an order.</p> <p>3 But over time would you come to learn</p> <p>4 things that I like more than others?</p> <p>5 A. For the most part, the client would 12:17PM</p> <p>6 let us know that at the initial sale. They</p> <p>7 would tell us their likes and their dislikes,</p> <p>8 and then that's how we would design the program</p> <p>9 for them.</p> <p>10 Q. Does your menu ever change? 12:18PM</p> <p>11 A. Does our menu change? We have a set</p> <p>12 menu and then we add to it.</p> <p>13 Q. So does your menu change over time?</p> <p>14 A. It changes -- the original menu stays</p> <p>15 pretty much the same. We just add more weeks. 12:18PM</p> <p>16 Q. Okay. You add other dishes.</p> <p>17 A. Yes. More variety.</p> <p>18 Q. And over time as you add more dishes,</p> <p>19 would you try and come to learn which of them I</p> <p>20 like and which of them I don't like? 12:18PM</p> <p>21 A. Your restrictions are probably your</p> <p>22 restrictions for the most part. Maybe if you</p> <p>23 don't like one of those dishes, you will let us</p> <p>24 know, but for the most part if a person doesn't</p> <p>25 like an I don't eat seafood or fish, if the new 12:18PM</p>	<p>1 * ROUGH - CONFIDENTIAL - ATTORNEYS' EYES ONLY *</p> <p>2 weeks come up and it's fish and shellfish in</p> <p>3 there, then it's going to stay the same</p> <p>4 restrictions. It's not going to change because</p> <p>5 there's new dishes. If I don't eat tuna and cod 12:18PM</p> <p>6 comes up, I don't like cod either because I just</p> <p>7 don't eat fish in general, so it would just</p> <p>8 carry over.</p> <p>9 Q. How detailed is the -- was the</p> <p>10 questionnaire that Zone Chefs would give to the 12:19PM</p> <p>11 customer at the outset?</p> <p>12 A. Basic questions. Every company does</p> <p>13 the same thing. Every company pretty much asks</p> <p>14 the same questions. Really it's just a basic</p> <p>15 question; name, address, phone number, all of 12:19PM</p> <p>16 that; height, weight, things like that and then</p> <p>17 different allergies or restrictions. It seems</p> <p>18 like every company does the same thing.</p> <p>19 Q. Did Zone Chefs try and periodically</p> <p>20 learn more about its customers in an effort to 12:19PM</p> <p>21 possibly sell them more product?</p> <p>22 MR. KEYHANI: Objection to form.</p> <p>23 You can answer the question if you</p> <p>24 understand.</p> <p>25 A. Not that I recall. 12:20PM</p>